rent for that part or rents which including the apportioned rental or value of any part of the premises retained by the tenant or not sub-let by him exceed in the aggregate by more than ten per centum the rent of the whole premises.

The only point that remains for decision is the material date in relation to the receiving by the tenant of what I may for the sake of brevity call "excessive rent". I propose to follow the opinion of the learned Chief Justice of the Federation expressed in the case of *Woon Guat Chin (f) v. Lim Sian Poon*[2] where Thomson J. as he then was, said :—

> "Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 per cent of the rent paid by him to the landlord."

It is true that Spenser Wilkinson J. in the case of *Hooi Moon v. Ar. K. Suppiah Chettiar*[3] said :—

> ". . . if at the date when the contractual tenancy terminates the tenant is receiving rent in excess of seventy-five per cent of the main rent the conditions of paragraph (j) to section 13(1) are fulfilled, and the landlord is entitled to possession."

I do not, however, consider that this is a different statement of the law from that contained in the judgment of Thomson J. It seems to me that since Spenser Wilkinson J. referred to Thomson J.'s. judgment in his own judgment and did not differ from it he was only deciding so much as he had to decide for the purposes of the particular case before him, and that Thomson J. in effect decided the same thing as Spenser Wilkinson J. and something further which was necessary for the purpose of the case before him. It therefore seems to me quite clear that if the landlord establishes that the tenant received excessive rent at any time after the 1st July, 1956, when the Ordinance came into force, and before the commencement of proceedings he is entitled to possession whether or not he was the landlord at the time when the excessive rent was accepted. The rent of $92.50 was undoubtedly excessive rent in the sense in which I have used the term, as the rent to which he was entitled was only $50, and I cannot accept the argument of counsel for the appellant that because this rent was paid in arrear in respect of the period 10th June to 10th July, 1956, that section 12(1)(j) is not applicable. The tenant manifestly did the very act which is contemplated by section 12(1)(j) at a time when the section was in force and he cannot escape the consequences of that act by saying that it was done in respect of a period prior to the commencement of the Ordinance. For these reasons I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *K. C. Chan; Cheang Lee & Ong.*

EMPLOYEES PROVIDENT FUND BOARD, F.M. v. GOH TIONG TAN

[O. C. J. (Hepworth J.) July 5, 1957]

[Malacca — Originating Summons No. 61 of 1956]

Practice — Rules of the Supreme Court, 1934, O. 26 r. 5, O. 51 rr. 13 & 14, and O. 52 — Originating Summons — Whether application can be made by originating summons — English R.S.C., O. 54A r. 1A.

In this case the plaintiffs took out an Originating Summons applying for the determination of the following questions: "Whether or not the lighter workers (Taikongs and boatmen referred to in the plaintiffs' affidavit) are 'employees' as defined in section 2 of the Employees Provident Fund Ordinance, 1951." The preliminary question was raised as to whether the proceedings were correctly brought by Originating Summons.

Held: as there is nothing in O. 52 of the Rules of the Supreme Court which provides for the issue of an Originating Summons in the circumstances of this case and as there is no statutory provision applicable, there is no jurisdiction at all in this case and therefore no order could be made on the summons.

Cases referred to :—

(1) *Short v. Henderson* (1946) 115 L.J. (P.C.) 41; 62 T.L.T. 427; 174 L.T. 417.

(2) *S. Rm. Raman Chettiar v. Soh Bek Neo* (1952) M.L.J. 170.

ORIGINATING SUMMONS.

L. A. Massie (Federal Counsel) for the plaintiffs.

M. B. Brash for the defendant.

Hepworth J. : — This was an Originating Summons taken out by Federal Counsel on behalf of the Employees Provident Fund Board, plaintiffs, against one Goh Tiong Tan, defendant, applying for the determination of the following question :—

> "Whether or not the lighter workers (Taikongs and boatmen referred to in the Plaintiffs' Affidavit) are 'employees' as defined in section 2 of the Employees Provident Fund Ordinance, 1951."

Before the Summons was fixed for hearing I indicated that in the first instance I wished to be satisfied that the procedure adopted in this case was correct and that the plaintiffs were entitled to ask for a declaration determining the question stated above. The hearing on the 29th May, 1957, therefore was only for the purpose of deciding whether the proceedings and what they purported to achieve were in order.

Mr. Brash on behalf of the defendant argued that the proceedings were not in order because the only matters which could be brought before the Court by Originating Summons, apart from specific statutory provision, were those matters which were provided for in O. 52 and if a particular matter was not provided for in O. 52 then an Originating Summons was not the

correct method of commencing the proceedings. Though the lighter workers referred to might be said to be employed under a contract of service, the provisions of r. 5 of O. 52 were not applicable because the plaintiffs were not parties to any such contract and the provisions of r. 5 can only be invoked where a contract is in question by the parties to the contract. Nowhere in O. 52 was provision made for proceedings such as these to be commenced by Originating Summons. O. 26 r. 5 permits the making of a declaratory judgment, but this could only apply in a matter such as this if it had been commenced by the issue of a writ. He submitted that the subject matter of this Originating Summons was not covered by O. 52 nor was any statutory provision applicable and accordingly the Court had no jurisdiction.

Mr. Massie for the plaintiffs stated that he did not rely on O. 26 but was relying first of all on the provisions of rules 13 and 14 of O. 51, and in particular to rule 14(1)(j), and also on O. 54A r. 1A in the Annual Practice. He contended that from the wording of rule 13 and rule 14, and in particular rule 14(1)(j), by inference the Court had jurisdiction to hear applications by Originating Summons for the determination of any question of law. He added that the present application was not only a question of law but also a question of the construction of a statute, and it was also covered by O. 54A r. 1A in the Annual Practice, it being the established practice in this Court to utilise the Annual Practice when the provisions of the local rules did not cover a particular point.

Whether or not such is the established practice of this Court, O. 54A r. 1A of the Annual Practice cannot, I think, apply because in my opinion this is not a question of the construction of a statute, the definition of the word "employee" in the Employees Provident Fund Ordinance, 1951, being reasonably clear, but a question of the application of the facts of this particular case to that definition. However I think that in view of the Privy Council decision in *Short v. Henderson*[1] there can be little doubt that the question is a question of law.

Mr. Massie further argued that when the Originating Summons was first issued the defendant did not object and took no steps to have it set aside. In fact the defendant entered appearance to the Originating Summons and counter affidavits were filed. He submitted therefore that the defendant had waived any right to object to the Originating Summons, and in support quoted *S. Rm. Raman Chettiar v. Soh Bek Neo*[2], which was a Court of Appeal case. In that case however the proceedings had been properly commenced by Originating Summons but there had been a procedural error after the issue of the Summons and it was this error which was held to have been waived. In the present matter it is Mr. Brash's submission that the Originating Summons is bad and that the matter has not been brought before the Court at all.

I do not think that the present case is covered by O. 52, and there is no statute applicable to cover the use of an Originating Summons in circumstances such as these, and accordingly it remains to be decided whether the contention that by inference from rule 14(1)(j) of O. 51 this is a matter which can be started by Originating Summons is correct.

On perusing O. 51 I think it is clear that that Order deals with applications in chambers and summonses in chambers. These summonses in chambers may or may not be Originating Summonses. These summonses may be summonses in a matter which has been commenced by writ. This being so no inference can be drawn from rule 14(1)(j) of O. 51 that the subject matter of this application can be started by Originating Summons. As there is nothing in O. 52 which provides for the issue of an Originating Summons in the circumstances of this case, and as there is no statutory provision applicable, there is no jurisdiction at all in this case, and where there is no jurisdiction jurisdiction cannot be conferred by the parties.

I therefore make no order on the Summons.

This being the case I am not called upon to decide the further point as to whether the plaintiffs are entitled to ask for a declaration determining this question.

No order.

Solicitors: *Allen & Gledhill.*

X v. COMPTROLLER OF INCOME TAX

[A. C. J. (Chua J.) August 22, 1957]

[Singapore — District Court Appeal No. 8 of 1956]

Income Tax — Taxpayer's deduction of bad debt — Income Tax Ordinance (Cap. 166) s. 14(1)(d) — Custom of borrowing and lending money among building contractors as activity ancillary to business — Whether such "reciprocal arrangements" are essentially necessary to business — Loss of capital.

The appellant carried on the business of a building contractor. During the course of his business he borrowed and lent large sums of money without security. In this case the appellant agreed and lent a sum of $100,000 to one F without security. F was subsequently adjudicated bankrupt. The appellant considered that the $100,000 lent to F was a total loss and sought to deduct for the purposes of paying the income tax the sum of $50,000 (being half of the $100,000 lent to F; the other $50,000